2001

State of Utah v. Valden Cram : Brief of Appellant

Utah Supreme Court

COPY

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, Plaintiff and Appellee, vs. VALDEN CRAM, Defendant and Appellant.	Case No. 20010046-SC Priority 12

BRIEF OF APPELLANT

ON PETITION FOR WRIT OF CERTIORARI FROM
THE DECISION OF THE UTAH COURT OF APPEALS
JUDGES NORMAN H. JACKSON, JAMES Z. DAVIS AND WILLIAM A. THORNE
AFFIRMING ORDER OF THE HONORABLE G. RAND BEACHAM, FIFTH
JUDICIAL DISTRICT COURT OF WASHINGTON COUNTY, STATE OF UTAH,
DENYING DEFENDANT'S MOTION TO DISMISS THE CRIMINAL ACTION
AGAINST HIM FOR BEING TWICE PUT IN JEOPARDY IN VIOLATION OF THE
FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE
I, SECTION 12, OF THE UTAH CONSTITUTION.

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BRIEF OF APPELLANT

APPELLATE JURISDICTION

This is an appeal in a criminal case from the Fifth District Court, Washington County, State of Utah, the Honorable G. Rand Beacham presiding. The appeal was originally taken to the Utah Court of Appeals, which had jurisdiction of the case pursuant to UTAH CODE ANN. §78-2a-3(2)(e). After the filing of a timely Notice of Appeal, the Utah Court of Appeals dismissed Cram's appeal and this Court granted Cram's Petition for Writ of Certiorari on April 28, 2001. Hence, this Court has jurisdiction of this matter pursuant to UTAH CODE ANN. §78-2a-4.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Is defendant's re-trial barred by the former jeopardy provisions of the Fifth Amendment to the United States Constitution and Article I, Section 12, of the Utah

Constitution, when the Court unilaterally declared a mistrial when the jury had been deliberating for less than three and a half hours after a two day jury trial? As the Court determined that pursuant to UTAH CODE ANN. § 76-1-403 the declaration of a mistrial was appropriate, the standard of review is one of correctness. "Legal determinations . . . are defined as those which are not of fact but are essentially of rules or principles uniformly applied to persons of similar qualities and status in similar circumstances." *State v. Pena*, 869 P.2d 932, 935 (Utah 1994). This issue was preserved in the trial court by defendant's written motion. (See R-810-811, Defendant's motion to dismiss; R-812-821, memorandum of points and authorities in support of defendant's motion to dismiss; R-831-832, plaintiff's response to defendant's motion to dismiss; and R-837, court's order denying defendant's motion to dismiss.)

STATEMENT OF THE CASE

Defendant was charged with three counts of evading state individual income tax, liability for the payment of which allegedly arose during the calendar years 1991, 1992, and 1993. Each count was alleged as a second degree felony. The pertinent state statutes are UTAH CODE ANN. §§ 59-1-401, 59-10-541, and 76-8-1101. (See amended information at R-347-348.) Defendant had previously not filed state income tax returns on or before the 15th day of April succeeding the close of each of these tax years. (See R-802 at pages 93-95; R-846 at page 94.) In 1994, the state tax commission

obtained an order of the Third Judicial District Court which directed the Defendant's wife to file tax returns for the subject years. Defendant had returns prepared and he filed them in deference to the court's order against his wife. (See R-850, State's Exhibit's Nos. 1, 2 and 3.)

On August 17, 1998, a jury was impaneled and sworn to try Appellant on alleged tax evasion charges. The state's entire case rested upon showing that defendant had a tax liability for calendar years 1991, 1992 and 1993. The only evidence the state had to show a tax liability for those years was taken from defendant's tax returns for those years. (See R-846, pages 95-99.)

Defendant contended that the tax returns were not admissible as *prima facie evidence* of the accuracy of any entry made or calculation arrived at in the individual documents contained therein. (R.846, pp. 146-153.)

The state relied heavily upon the declarations made in the income tax returns which the defendant had been required by court order to file. In his closing argument, the prosecutor asked the jury to "take a few minutes to go through Exhibits 1, 2, and 3, and look at those tax returns that [the appellant] submitted in 1994 . . . ." (R.802, page 214.) The prosecutor then went on to tout these exhibits as evidence of "income which [appellant] had earned during those three years." *Id.* Finally, the prosecutor "did have a tax obligation under the Utah individual income tax for the year 1991, the year 1992, and 1993." *Id.* This, of course, was an element of the offenses charged.

a. The case went to the jury at 6:48 p.m. on August 18.[1] After deliberating for about two hours, the jury reported through the bailiff that it was unable to reach a verdict. See R-802, transcript of second day of jury trial, page 227. The district court went back on the record at 9:09 p.m., after having previously determined that it would charge the jury further, using what is sometimes referred to as a "deadlock instruction." At that time, appellant's trial counsel asked the court to declare the proceedings a mistrial. See R–802, transcript of second day of jury trial, pages 227-28. The court charged the jury further and at 9:16 p.m. sent it back to deliberate. See R-802, transcript of second day of jury trial, page 230; Instruction No. 16.

b. Shortly thereafter, the court called counsel into chambers for the purpose of considering two handwritten notes which the jury had submitted through the bailiff. The first considered was the jury's request that it be provided a copy of the text of UTAH CODE ANN. § 59-10-542 which was referenced in the state tax commission certificates attached to the face of and which "authenticated" State's Exhibit Nos. 1, 2, and 3. The note read: "On state Exhibit #3 Utah Code Annotated 59-10-542 (1953 as amended) We would like to know what the code says." See R-850, Court's Exhibit No. 1.

Section 59-10-542, in relevant part and with our emphasis added, provides:

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[1]All time-clock references are based upon the time signature appearing on the official videotape record of the proceedings and not necessarily upon the court's stated approximations of the time which were articulated for the record. There are no material discrepancies.

> The certificate of the [state tax] commission to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this chapter, shall be *prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.*

c. The court and counsel briefly discussed this request prior to going on the record. During these discussions, the court was apparently laboring under some misapprehension concerning the subject matter of the referenced code section.[2] The court suggested that the reference which the state tax commission certificates made to § 59-10-542 was apparently made in error. When the court went on the record in chambers at 9:55 p.m., the state's prosecutor offered the following in response to the jury's request.

> [THE STATE'S PROSECUTOR]: As I previously stated, I think I'd just tell them that that section is not relevant to their analysis of at least that document. I don't know about the other two. Since the question didn't ask about the other two, do they understand it or not, I don't know.

See R-802, transcript of second day of jury trial, page 231. Operating under the same misapprehension, appellant's trial counsel offered a suggestion which prompted the following response from the prosecutor:

> [APPELLANT'S COUNSEL]: I think that we should probably let them know that that was apparently an erroneous reference to the code and it should not be considered by them.
>
> [THE STATE'S PROSECUTOR]: I'm just afraid that

---

[2]The introductory heading in § 59-10-542 reads: "**Venue of offenses — Evidence.**" The first sentence of the text refers to matters relevant only for the purpose of establishing venue.

erroneous just sounds bad on my part as far as the evidence.

The court and counsel considered this second note while still on the record in chambers. The question it contained further signaled a potential problem for the prosecution, the fact of which now became immediately apparent. That note read: "If there is proof from the State of Utah, that income is taxable, By law, Utah law. Was it shown in court Today[?]" See R-850, Court's Exhibit No. 2. For obvious reasons, the appellant was no longer interested in a mistrial.

These two notes indicated that the jury had indeed taken the court's supplemental instruction to heart and was making a conscientious effort to reach a verdict.

d. While the court and counsel were still framing responses to the jury's notes, the bailiff left the court's chambers and returned a few moments later. It was 10:01 p.m. When the bailiff opened the door and stood at the threshold, the state's prosecutor asked: "No more questions?" When the bailiff responded in the negative, appellant's trial counsel commented: "That's what I was expecting." And the state's prosecutor quipped: "Once they get rolling."[3] The judge was still in the process of completing his written responses and invited counsel to review them prior to their submission to the jury. The court then went off the record. It was now 10:02 p.m.

When the court went back on the record only 13 minutes later, the following

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[3]These exchanges are "on the [videotape] record," but do not appear in the transcript. Had the transcriber included these remarks, they would have appeared near the bottom of T 233.

exchange between the court and the foreperson of the jury began:

> THE COURT: We're again back on the record. The members of the jury are returned to the courtroom. The parties are present. The attorneys are present.
>
> Let me ask first of all who was selected as the chairperson of the jury?
>
> (No verbal response on tape.)
>
> THE COURT: Mr. Holt?
>
> [THE FOREPERSON]: Yes.
>
> THE COURT: All right. And the report I've received through the bailiff is that the jury has been unable to reach a unanimous decision. Is that correct?
>
> [THE FOREPERSON]: Yes.
>
> THE COURT: All right. Do you think that any additional period of time for deliberation would make any difference?
>
> [THE FOREPERSON]: No.
>
> THE COURT: All right. All right. and do you have any question that you want to ask about that? There have been a couple of notes passed and some response given, although perhaps not as much response as you had hoped. Any question or –
>
> [THE FOREPERSON]: No. (Inaudible).
>
> THE COURT: All right. Are those questions that you have not sent out to me so far?
>
> [THE FOREPERSON]: Well, yes and no.
>
> THE COURT: Yes and no. Okay. All right. I guess I need to make sure I understand then. If there were a couple of

> questions answered, do you think you could reach a verdict or it would be at least worth deliberating longer or do you think that would just confirm the positions of decisions that the jurors have reached?
>
> [THE FOREPERSON]: Well, speaking for myself, it would probably (inaudible).
>
> THE COURT: Okay. All right.
>
> Counsel, is there any record that you would like to make at this point?
>
> [APPELLANT'S COUNSEL]: I don't have anything, your Honor.
>
> [THE STATE'S PROSECUTOR]: No, your Honor.
>
> THE COURT: All right. All right.
>
> Well, ladies and gentlemen of the jury, I'm not going to require you to stay any longer. I am going to release you from your duties here and excuse you to go home.

See R-802, transcript of second day of jury trial, pages 234-35.

e. When the district court set the matter back on the trial calendar, the appellant moved to dismiss on a "plea" of once in jeopardy. Upon hearing the motion, the court agreed that the petitioner had not consented to the discharge of the jury and the termination of the prior proceedings. However, the lower court denied the motion, relying upon the language of UTAH CODE ANN. § 76-1-403(4)(c)(iv) and concluding that petitioner's trial had been properly terminated.

Cram timely filed a Notice of Appeal with the Utah Court of Appeals. The Court of Appeals concluded that inasmuch as Cram had made no objection to the trial court's

decision to declare a mistrial, he "failed to adequately preserve his objections" and affirmed the district court. (See, photocopy of the Utah Court of Appeals unpublished slip opinion issued in this matter, attached as Addendum No. 7).

ARGUMENT

POINT I

I. PETITIONER DID NOT CONSENT TO THE MISTRIAL IN THE INSTANT CASE.

In this case, in denying Cram's Motion to Dismiss, the trial court reasoned that defendant's trial was properly terminated under UTAH CODE ANN. §76-1-403. That section states that a criminal trial may be properly, although prematurely, terminated where the trial court "finds and states for the record that the termination is necessary because the jury is unable to agree upon a verdict." The analysis which led the district court to deny defendant's motion was arguably limited to the application of the plain language of the statute and did not involve any consideration of the constitutional context within which the statue necessarily operates. The Utah Court of Appeals, while affirming the trial court's ruling in this regard, additionally concluded that inasmuch as the defendant made no objection contemporaneously with the declaration of the mistrial, he failed to adequately preserve his objection. Slip op., at 1-2. The opinion then goes on to indicate that because the defendant failed to raise the issue in the trial court, the issue cannot be considered on its merits on appeal. Slip op., at 2.

In point of fact, the defendant did raise the issue in the trial court. The record clearly demonstrates that the defendant moved the trial court to dismiss the charges when the matter came on for scheduling. (R.810-811, motion to dismiss; R.812-821, memorandum of points and authorities in support of defendant's motion to dismiss; R.831-832, plaintiff's response to defendant's motion to dismiss, and R.834-836, order denying defendant's motion to dismiss. Indeed, the Court of Appeals concedes this fact. *See* Slip op., at 1, fn. 2. In sum and substance, the Court of Appeals concluded that in failing to make a *contemporaneous* objection, he *consented* to the mistrial and could not effectively raise the issue thereafter in the trial court or on appeal. By framing the issue in terms of defendant's alleged failure to raise the issue in the trial court, the court of appeals avoided addressing the real issue, namely, whether the defendant *consented* to the mistrial. In so doing, the court of appeals sidestepped the necessity of deciding this case in the context of controlling caselaw, to-wit: *State v. Ambrose*, 598 P.2d 354, 358 (Utah 1979) and *State v. Nilson,* 854 P.2d 1029 (Utah App. 1993).

"The double jeopardy protection is not so ephemeral that it vanishes if an accused does not anticipate and object to every unexpected action on the part of the court." *Ambrose*, 598 P.2d, at 360-61. Mere silence or failure to object to the jury's discharge is not such consent as will constitute waiver of a former jeopardy plea. *State v. Fenton,* 19 Ariz. App. 274, 506 P.2d 665 (1973); *People v. Compton*, 6 Cal.3d 55, 98 Cal.Rptr. 217, 490 P.2d 537 (1971)*; Commonwealth v. Baker*, 413 Pa. 105, 196 A.2d 382 (1964). *See generally*, Annot. 63 A.L.R.2d 782 § 5 (1959).

In *State v. Nilson,* 854 P.2d 1029 (Utah App. 1993), the court of appeals affirmed the trial court's ruling that the accused could not be retried where the state moved for dismissal when the alleged victim unexpectedly changed her testimony regarding the date of the alleged offense. The state contended that Nilson had consented to the termination of his first trial when his counsel stated: "I have no objection to the motion to dismiss." The court noted:

> The facts of this case do not allow us to construe Nilson's articulated lack of objection as constituting consent to the State's motion to dismiss. . . . When the State moved for dismissal to expedite the inevitable [acquittal], Nilson had no obligation to warn that double jeopardy might bar a subsequent reprosecution. Nor should he be required to actively oppose the dismissal of charges against him and insist that the inevitable scenario be played out, on pain of losing his protections under the double jeopardy clause. Given the dialogue about a probable directed verdict, the rapidity of the proceedings, and lack of argument by the State that the circumstances constituted "legal necessity" for declaration of a mistrial, we find Nilson's response was inadequate to constitute consent.

Id., at 1032.

In the course of considering defendant's motion to dismiss in the instant case, the State argued that as the defendant had requested a mistrial, prior to the Court's *sua sponte* declaring a mistrial, that he had in some fashion consented to the mistrial. (R.826-827.) The trial court obviously rejected that argument instead holding that pursuant to UTAH CODE ANN. § 76-1-403 a declaration of a mistrial was proper. (R.835.) The defense articulated by defendant in this matter was that the State had been unable to produce any evidence that defendant had a tax liability other than the possibly erroneous tax returns of defendant. (R.850, State's Exhibits 1, 2 and 3.) After defendant had requested the

mistrial, the jury sent a note requesting guidance as to whether the state had proven that defendant had taxable income pursuant to Utah law. (R.850, Court's Exhibit No. 2.) At that point, it was obvious that the jury had taken the trial court's deadlock instruction seriously and was considering the evidence before it. The trial court refused to find that defendant had consented to a mistrial and there is no reason to disturb that finding on appeal.

If the rule of law which the court of appeals has applied in deciding this case had been applied in *Ambrose* and *Nilson*, the defendants in those cases would have been subject to further prosecution. Neither of them objected to the termination of the proceeding. Like the defendant in the instant case, the defendants in those cases raised their objections after the state took steps to further prosecute the matters.

The court of appeals' reliance on *State v. Holgate*, 2000 UT 74, ¶11, 10 P.3d 346 is clearly misplaced. Quoting *Holgate*, the court of appeals concluded that "[a] defendant should not be permitted to forego making an objection with the strategy of 'enhanc[ing] the defendant's chances of acquittal and then, if that strategy fails, . . . claim[ing] on appeal that the Court should reverse.'" Slip op., at 2. In *Holgate*, the defendant withheld any objection until after he was convicted. In this instant case, as in other former-jeopardy cases, the defendant has not been convicted, nor is there reason to conclude that he necessarily would have been had the proceedings continued to verdict. The defendant did not remain silent while flawed proceedings continued to a conviction. He stood mute while the court terminated a trial in which he may well have been acquitted. He was under

"no obligation to warn that double jeopardy might bar a subsequent reprosecution." *Nilson*, 854 P.2d, at 1032.

In *United States ex rel. Russo v. Superior Court*, 483 F.2d 7 (3d Cir.), *cert. denied*, 414 U.S. 1023 (1973), the defendant moved for a mistrial after learning that the jury was deadlocked. The trial court did not specifically rule on the motion but sent the jury to a motel for the evening. The following day, without consulting either the defense or prosecution, the trial court granted a mistrial because the jury was exhausted. The defendant objected to the mistrial after the jury had been dismissed. In concluding that the defendant did not consent to the mistrial even though the trial court stated that it was granting the defendant's motion from the previous day, the court reasoned that the defendant's motion was made for reasons different than that upon which the court ruled, the defendant could have concluded that there was a strong possibility for a verdict and therefore his assessment of his chances for an acquittal changed, and the defendant had no opportunity to object when the court declared a mistrial. *Id.*, at 16. The court wrote, "We see no reason to lock him into a motion once it is made." *Id.*

In *Jones v. Commonwealth*, 379 Mass. 607, 400 N.E.2d 242 (1980), defendant Jones was tried with a co-defendant, one Frank Rivera, who was represented by separate counsel. During the impanelment of the jury the judge made a number of caustic remarks about both defense counsel, apparently prompted by their conduct. The most serious was an exchange between the trial judge and Jones's counsel which tended to disparage Jones's counsel's legal ability. After the jurors were excused Rivera's counsel made an

oral motion for mistrial in which Jones's counsel joined. The court denied the oral motion. The next morning, Jones filed a written motion for mistrial. The record contained no references to the written motion until a discussion which occurred six days later concerning whether a mistrial ought to be granted.

Contrary to the Commonwealth's expectations as expressed in the prosecutor's opening statement, the government's eyewitness did not identify Jones as having been at the scene of the crime. As a result of this failure of proof, counsel for Jones said little or nothing for the first two days of testimony and Jones obtained directed verdicts at the close of the Commonwealth's case on two of the four indictments.

Later, when Rivera made a second motion for mistrial, Jones objected. The court informed Jones that he was granting his prior motion for a mistrial, which had been taken under advisement. Counsel then formally waived the earlier motion, explaining that it had been based on the events occurring during impanelment and that any prejudice arising in that regard had since been abated. The proceedings were thereafter declared a mistrial. Jones's motion to dismiss the remaining indictments on double jeopardy grounds was denied and he appealed.

The Appeals Court concluded that Jones had not consented to the mistrial by filing a motion for mistrial based on the jury impanelment, that there was no judicial overreaching and that on the record the Commonwealth had demonstrated a "manifest necessity" for the mistrial. *See Jones v. Commonwealth*, 7 Mass. App. Ct. 383, 387 N.E.2d 1187 (1979). Upon further appeal to the Supreme Judicial Court of Massachusetts,

the high court agreed that Jones had not consented to the mistrial, but concluded that the record did not support the conclusion that there was "manifest necessity" for the mistrial. The remaining indictments were ordered dismissed.

Although the trial court had purported to act upon Jones's mistrial motion, the Commonwealth did not contend that Jones had consented to the mistrial. Instead, the Commonwealth argued that by not requesting a hearing and a ruling on his written motion for a mistrial Jones contributed to the ultimate declaration of a mistrial, an argument not unlike the one which the state has advanced in the instant case. In holding that Jones had not "contributed" to the granting of the mistrial, the Massachusetts court noted that Jones's oral motion had been denied at the time it was made. Since the written motion set forth essentially the same grounds, Jones could well have concluded that the written motion had been denied. Moreover, a "request for a mistrial may, with the mere passage of time, be considered as having been improvidently made and fortunately denied." *Id.*, at 621. The court concluded:

> A defendant is entitled to withdraw a motion for mistrial which is initially not granted and then later revived by the court. If a Judge decides to rest the decision to declare a mistrial on a defendant's earlier motion, the Judge must inquire whether the defendant wishes to maintain the motion. *See* Note, Jeopardy and Mistrials, 125 U. Pa. L. Rev. 449, 557 (1977). If the defendant makes it clear in answer to the Judge's inquiry that he wishes to withdraw the earlier motion for a mistrial, the Judge must then decide whether there is "manifest necessity" for a mistrial over the defendant's objection. If the motion for mistrial is withdrawn by the defendant, the Judge may not rely on the earlier request for mistrial as permitting a mistrial by consent. "Where the request for mistrial is not granted and the trial proceedings resume, the defendant is again entitled to resume control over the course of those proceedings, a control which would be meaningless if subject to defeasance

> through a purported grant of a request made prior to the resumption of control." *Braxton v. United States*, 395 A.2d 759, 767 (D.C. Ct. App. 1978). *See Commonwealth v. Robson*, 461 Pa. 615, *cert. denied*, 423 U.S. 934 (1975); *United States ex rel. Russo v. Superior Court*, 483 F.2d 7 (3d Cir.), *cert. denied*, 414 U.S. 1023 (1973); *Maes v. District Court*, 180 Colo. 169 (1972).

Id., at 621-22. *Cf. Gershon v. Sardonia*, 50 Misc. 2d 423, 425 (N.Y. Sup. Ct. 1966) ("During the course of a trial the picture constantly changes and a motion made and denied may eventually benefit the party who moved"); *United States v. McCambridge*, 551 F.2d 865, 872 (1st Cir. 1977) ("concerns which led counsel to file the motion . . . [may be] dissipated in light of later events . . ."); *Lovinger v. Circuit Court*, 845 F.2d 739, 743-44 (7th Cir.), *cert. denied*, 488 U.S. 851 (1988) (defendant did not consent to mistrial despite his earlier motion because his motion was perfunctory, the court's mistrial was based on another ground, the court did not mention the earlier decision, and that because of the State's "foibles," the defendant's assessment of his chances of acquittal may well have changed). In the instant case, defendant's motion for mistrial was motivated by defense counsel's desire to avoid having the jury instructed further. R 802, at pp. 227-28. Clearly, there is some legitimate concern that an Allen instruction may compromise the defendant's right to the independent judgment of each individual jury. *See Allen v. United States*, 164 U.S. 492 (1896); *State v. Brown*, 853 P.2d 851, 861 (Utah 1992). That motion was denied and the jury was sent back to deliberate further.

In this case, in the Court below, when the court and counsel next conferred it was for the purpose of formulating responses to questions from the jury, not for the purpose of

discussing any continuing deadlock. While the jury had not arrived at a consensus, it was deliberating. Jurors may not reach agreement for days, but as long as they are deliberating, they are not deadlocked.

When the court went back into session, the court began questioning the foreperson concerning the state of the jury's deliberations. R 802, at pp. 234-37. The court then, without first indicating to counsel its intention to do so, declared the proceedings a mistrial. Following his questioning of the foreperson, the court asked counsel if they wanted to make a further record. Had the court stated that it intended to declare a mistrial or that it was entertaining the motion which the defendant had previously made, counsel would have had an opportunity to indicate whether he intended to maintain or withdraw the motion, if indeed the motion remained extant. It does not require an experienced trial lawyer or an exceptional jurist to recognize the fact that the circumstances had substantially changed with the submission of the questions from the jury.

The district court did not indicate that it was reconsidering defendant's spent motion as a basis for declaring a mistrial because the court did not resort to the motion as a basis for terminating the proceedings. Indeed, in denying defendant's motion to dismiss on double jeopardy grounds, the lower court had the intellectual integrity to concede that the court had declared the mistrial on the basis of its perception of necessity rather than attempting to assign the termination of the proceedings to the defendant's motion or his consent manifest in some other manner.

Clearly, the defendant did not consent to or otherwise seduce the district court into declaring the mistrial.

POINT II

II. THE DISTRICT COURT'S RULING IS NOT SUPPORTED BY A SHOWING THAT "MANIFEST NECESSITY" REQUIRED MISTRIAL IN INTERESTS OF JUSTICE.

A. Before the District Court May Declare a Mistrial, There Must be Manifest Necessity for Such a Determination.

The court of appeals briefly turned its attention to the merits of defendant's contention regarding the determination which had been reached by the trial court on the merits of the case, noting: "Were we to address the merits of defendant's double jeopardy claim, our ultimate conclusion would not change." Slip op., at 2. After making this observation, the court of appeals simply cited caselaw without engaging in any real analysis of the law in the context of the facts of this case.

The trial court's discretion in discharging the jury is far from unbridled. There must be a factual basis for the exercise of this discretion. Otherwise stated: "When ordering a mistrial, the trial court must support its ruling by showing that legal necessity required mistrial in interests of justice." *State v. Castle*, 951 P.2d 1109 (Utah Ct. App. 1998) (Quoting *State v. Ambrose*, 598 P.2d 354, 358 (Utah 1979)). Moreover, this discretion is properly exercised only in "very extraordinary and striking circumstances." *Downum v. United States*, 372 U.S. 734, 83 S.Ct. 1033, 10 L.Ed.2d 100 (1963).

In assessing the propriety of the premature termination of a criminal trial, "[w]e

resolve any doubt 'in favor of the liberty of the citizen, rather than exercise what would be an unlimited, uncertain, and arbitrary judicial discretion.'" *Id.*, at 738, 83 S.Ct., at 1035-36 (*quoting United States v. Watson*, 28 Fed.Cas. 499, 501).

The trial court faced with the decision of whether it should prematurely terminate a criminal trial ordinarily finds itself on the horns of a very real dilemma. On the one hand, if it discharges the jury when further deliberations may produce a fair verdict, the accused is deprived of his "valued right to have his trial completed by a particular tribunal," *Arizona v. Washington*, 434 U.S., at 503, and upon retrial will likely suffer additional disadvantage as a consequence of the aborted proceedings.[4] On the other hand, if the court fails to discharge a jury which is unable to reach a verdict after "protracted and exhausting" deliberations, there exists a significant risk that a verdict may result from pressures inherent in the situation rather than from the considered judgment of, in the instant case, eight *independent* triers of fact. *Id.*, at 509.

In the case before the court, the status of the deliberations cannot reasonably be described as "protracted" or "exhausting" and the attendant circumstances certainly were not of such a nature as would have created any legitimate concern that, unless the court acted quickly in discharging the jury, pressures inherent in the ongoing deliberations would likely produce a "false" verdict. Only thirteen minutes elapsed between the time the court went off the record after consulting with counsel concerning the propriety and

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[4]See footnote 2, supra.

content of its proposed written responses to the jury's inquiries and that point in time when the court went back on the record with the parties present and the jury in the box and began questioning the jury foreperson concerning a "reported" deadlock. The jury would have scarcely had time to review, let alone consider and implement, the court's responses to its handwritten notes.

In the absence of any real pressure suggesting the need to immediately terminate the proceeding based upon the risk of an impending false verdict, there was little if anything which could have arguably justified the abandonment of efforts to preserve the petitioner's "valued right" to have his "confrontation with society" concluded in that proceeding. The premature termination of a criminal trial under such circumstances as existed in the instant case is a clear abuse of discretion, unless it is abundantly clear that further deliberations would have been so meaningless as to be unjustifiable on the basis of nothing more than the mere inconvenience of the additional time spent.

Some guidance is provided § 5.4(c) by as Standards Relating to Trial by Jury (Approved Draft 1968): "The jury may be discharged without having agreed upon a verdict if it *appears* that there is *no reasonable probability* of agreement." Emphasis added. *Cf. Muniz v. State*, 573 S.W.2d 792, 794 (Tex.Cr.App.1978) (jury may be discharged once it *appears* "*altogether improbable*" that it could agree upon a verdict). Such a showing may be based upon the jury's concession that it is hopelessly deadlocked, provided its deliberations have been of such duration as to indicate that the jury has had time to consider the evidence in its complexity or its simplicity.

B. Length of Deliberations vs. Complexity of the Case.

While the jury's acknowledgment of hopeless deadlock is a circumstance which may justify the discharge of the jury, in exercising that discretion, the trial court should consider the length of the deliberations in light of the length of the trial and the volume and complexity of the evidence. *See State v. Boogaard*, 90 Wash. 2d 733, 739, 585 P.2d 789 (1978). Otherwise stated, the exercise of discretion in declaring a mistrial will be judged by the amount of time the jury deliberates in light of the nature of the case and the time that it took the parties to present the evidence. *Muniz v. State*, *supra*; *Beeman v. State*, 533 S.W.2d 799 (Tex.Cr.App.1976); *O'Brien v. State*, 455 S.W.2d 283 (Tex.Cr.App.1970).

> This discretion, then, must be measured by the time they are kept together since the improbability that they will agree is made to depend upon the time. . . . Reasonable time is not the measure of his (judge's) discretion. . . . The jury must have been kept together for such time as to render it altogether improbable that they can agree. . . . Not that they would, but that they could agree.

Powell v. State, 17 Tex. Crim. 345 (1885).

If the jury declares that it is deadlocked before it has had sufficient time to consider all the relevant evidence, its "concession" is not a declaration of its inability to purposefully deliberate further, but one of its unwillingness to do so. Jurors who contend that there is no reasonable probability of reaching an agreement with their fellow jurors, when they have not first taken the opportunity to review and discuss everything which must be considered before a reasonable person would determine to stand for a certain

position, simply do not understand their duty as trial jurors. Their unwillingness to agree with fellow jurors is not born of a conscientious devotion to the duty which they undertook by oath.

A juror's first responsibility is to consider all of the evidence before arriving at an opinion. His second responsibility is to engage in meaningful dialogue with his fellow jurors so that each may consider the opinions of the other and the factual and legal bases advanced in support thereof. It is only after he has completed this process that it becomes his duty, as a matter of conscience, to stand for that position which in his judgment is supported by the law, the facts, and the justice of the cause.

The trial court that is confronted with premature protestations of deadlock, has a duty to educate that jury and to charge it anew. That is what "deadlock instructions" are made for; that is when they are not only permissible but necessary.

If the court discharges the jury upon its declaration of deadlock, the exercise of its discretion in so doing will be judged as a function of the time spent in deliberations in relationship to the time required to present the relevant evidence. In *Powell v. State, supra,* the appellate court held that the trial judge abused his discretion in discharging the jury after they had only deliberated for three and one half hours. *See also O'Brien v. State*, *supra* (jury deliberated one hour and ten minutes); *Beeman v. State*, *supra*, (two hours); *Grigsby v. State*, 158 Tex. Crim. 484, 257 S.W.2d 110 (App.1953) (one hour and forty-five minutes). *Cf. Satterwhite v. State*, 505 S.W.2d 870 (Tex.Cr.App.1974) (jury deliberated three times as long as was required to present the evidence); *Willis v. State*,

518 S.W.2d 247 (Tex.Cr.App.1975) (deliberated three times as long as it took the parties to put on their cases); *Brown v. State*, 508 S.W.2d 91 (Tex.Cr.App.1974) (deliberated nearly 13 hours over a three-day period after evidence was presented in less than one day).

In the instant case, even if the district court were absolutely convinced that each juror was of the firm opinion that further deliberations would avail nothing, it could not have reasonably acted thereon. The questions which the jury had asked of the court clearly indicated concern, and therefore apparent disagreement among the jurors, about the evidentiary significance of the state's documentary exhibits and the sufficiency of any other evidence presented for the purpose of establishing that the defendant had earned income which created an individual income tax liability. The district court could not have reasonably concluded that the jury had had sufficient time for each juror to reevaluate his or her position in light of the further direction they had received from the court.

But even more troubling was the perfunctory manner and speed with which the jury was discharged on the basis of this "report" of deadlock, is the absence of anything in the record which indicates that the jury had in fact professed deadlock *after* it had received and considered the court's responses to its handwritten notes.

C. The Jury's Declaration of Deadlock.

An equally serious concern arises from the method which the district court employed in finding that the jury was in fact "deadlocked." The United States Court of Appeals for the Fourth Circuit has stated:

> While the length of deliberations is a relevant factor [in determining whether to discharge a jury], the more important consideration is whether there is a possibility that the jury can reach a verdict within a reasonable time. The most reliable source as to this information is the jury itself.

United States v. Lansdown, 460 F.2d 164, 169 (4th Cir. 1972). *Cf.* Commentary, ABA Standards § 5.4(c). Obviously, if the jury, through its foreman and of its own accord, acknowledges that it is hopelessly deadlocked, there may be a factual basis for discharge "*if* the other jurors agree with the foreman." *State v. Jones*, 97 Wash. 2d 159, 641 P.2d 708 (1982) (emphasis added).

Some jurisdictions explicitly favor questioning the individual juror concerning his or her perception of the status of the deliberations; none have forbidden it. The ABA commentary reflects the rule in California that,

> Ordinarily the trial judge should not discharge a jury on the ground that there is no reasonable probability that the jury can agree without questioning the jurors *individually* as to such probability.

Paulson v. Superior Court, 58 Cal. 2d 1, 7, 22 Cal. Rptr. 649, 372 P.2d 641 (1962) (emphasis added). The failure of the trial judge to inquire of the individual juror's ability to reach a verdict has been held by the Alaska Supreme Court to be a factor in determining whether the judge discharged the jury prematurely. *Koehler v. Alaska*, 519 P.2d 442 (Alaska 1974). Preferable practice demands that the trial court first caution the jury that only a "yes" or "no" response is desired and then ask each juror if he or she agrees that a hopeless deadlock which could not be resolved by further deliberations exists. *See United States ex rel. Webb v. Court of Common Pleas*, 516 F.2d 1034 (3d Cir. 1975); *United*

States v. See, 505 F.2d 845, 851 (9th Cir. 1974), cert. denied 420 U.S. 992, 95 S.Ct. 1428, 43 L.Ed.2d 673; *State v. Nelson*, 234 N.W.2d 368 (Iowa 1975); *Paulson v. Superior Court of El Dorado County*, *supra*.

The record in the instant case indicates that the court asked a few cursory questions of the jury foreperson after the jury had purportedly, for a second time, indicated an impasse at reaching a verdict. The court's examination came after a brief consultation with counsel, in chambers, regarding the two questions that had then been put to the court by the jury.

The court did not inquire as to whether or not the jurors were "able to deliberate further," but only whether, in the opinion of the foreperson, further deliberations might be worthwhile. The foreperson's response to this inquiry is not clear from the record:

> THE COURT: . . . . If there were a couple of questions answered, do you think you could reach a verdict or it would be at least worth deliberating longer or do you think that would just confirm the positions or decisions that the jurors have reached?
>
> THE FOREPERSON]: Well, speaking for myself, it would probably (inaudible).

(R.802, at page 253.) If the jurors could still deliberate, which they were apparently willing to do, the jury should have been required to make the attempt.

Moreover, the jury foreperson did not claim to speak for the other members of the jury in responding to the court's question concerning the probable value of any further deliberation. Indeed, he made a point of expressly disclaiming the ability to or propriety of attempting to answer for anyone other than himself: "Well, *speaking for myself*, it

would probably (inaudible)." Emphasis added. (R.802, at pp. 235-236.) The record does not satisfactorily demonstrate the basis of the district court's decision to discharge the jury and declare a mistrial.

CONCLUSION

Based upon the foregoing, defendant respectfully requests that this Court reverse the Utah Court of Appeal's Memorandum Decision.

RESPECTFULLY SUBMITTED this 8th day of August, 2001.

AARON J. PRISBREY
Attorney for Defendant and Appellant.

MAILING CERTIFICATE

I do hereby certify that on this 8th day of August, 2001, I did personally mail true and correct copies via U.S. Mail of the above and foregoing document to:

Utah Supreme Court
450 South State Street
PO Box 140210
Salt Lake City UT 84111-0210
(10 copies, including original)
Via U.S. Mail

Laura B. Dupaix
Utah Attorney General's Office
Criminal Appeals Division
PO Box 140854
Salt Lake City, UT 84114-0854
(2 copies)

ADDENDUM NO. 1

AMENDMENT V TO THE UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use.

ADDENDUM NO. 2

Utah Const. Art. I, § 12 (1999)

§ 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Where the defendant is otherwise entitled to a preliminary examination, the function of that examination is limited to determining whether probable cause exists unless otherwise provided by statute. Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant if appropriate discovery is allowed as defined by statute or rule.

ADDENDUM NO. 3

TITLE 76. UTAH CRIMINAL CODE
CHAPTER 1. GENERAL PROVISIONS
PART 4. MULTIPLE PROSECUTIONS AND DOUBLE JEOPARDY

Utah Code Ann. § 76-1-403

§ 76-1-403. Former prosecution barring subsequent prosecution for offense out of same episode

(1) If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode, a subsequent prosecution for the same or a different offense arising out of the same criminal episode is barred if:

(a) The subsequent prosecution is for an offense that was or should have been tried under Subsection 76-1-402(2) in the former prosecution; and

(b) The former prosecution:

(i) resulted in acquittal; or

(ii) resulted in conviction; or

(iii) was improperly terminated; or

(iv) was terminated by a final order or judgment for the defendant that has not been reversed, set aside, or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

(2) There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of facts or in a determination that there was insufficient evidence to warrant conviction. A finding of guilty of a lesser included offense is an acquittal of the greater offense even though the conviction for the lesser included offense is subsequently reversed, set aside, or vacated.

(3) There is a conviction if the prosecution resulted in a judgment of guilt that has not been reversed, set aside, or vacated; a verdict of guilty that has not been reversed, set aside, or vacated and that is capable of supporting a judgment; or a plea of guilty accepted by the court.

(4) There is an improper termination of prosecution if the termination takes place before the verdict, is for reasons not amounting to an acquittal, and takes place after a jury has been impanelled and sworn to try the defendant, or, if the jury trial is waived, after the first witness is sworn. However, termination of prosecution is not improper if:

(a) The defendant consents to the termination; or

(b) The defendant waives his right to object to the termination;

(c) The court finds and states for the record that the termination is necessary because:

(i) It is physically impossible to proceed with the trial in conformity with the law; or

(ii) There is a legal defect in the proceeding not attributable to the state that would make any judgment entered upon a verdict reversible as a matter of law; or

(iii) Prejudicial conduct in or out of the courtroom not attributable to the state makes it impossible to proceed with the trial without injustice to the defendant or the state; or

(iv) The jury is unable to agree upon a verdict; or

(v) False statements of a juror on voir dire prevent a fair trial.

HISTORY: C. 1953, 76-1-403, enacted by L. 1973, ch. 196, § 76-1-403; 1974, ch. 32, § 3.

ADDENDUM NO. 4

PAUL DAME #
Deputy Washington County Attorney
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St. George, Utah 84770
WADE WINEGAR # 5561
Assistant Attorney General
JAN GRAHAM # 1231
Attorney General
236 State Capitol
Salt Lake City, Utah 84114

IN THE FIFTH JUDICIAL DISTRICT COURT, STATE OF UTAH
WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff,	:	**ORDER**
v.	:	
VALDEN CRAM,	:	CASE NO. 961501097
Defendant,	:	JUDGE G. RAND BEACHAM

On Monday, February 1, 1999, a hearing was held before the Honorable Judge G. Rand Beacham on the above captioned case regarding Defendant's Motion to Dismiss. Defendant was present and represented by counsel Aaron J. Prisbey. Assistant Attorney General Wade S. Winegar represented the State. After hearing argument from both counsel, the Court makes the following findings and order:

The Court hereby finds that according to U.C.A. 76-1-403 and Utah case law on the issue, the mistrial declared in this matter on August 18, 1998 was not an improper termination of the prosecution and resulted because the jury was unable to agree upon a verdict. The Court further finds a proper record was made at the time the mistrial was declared and thus orders as follows:

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss be denied.

Dated this 10 day of February, 1999.

G. Rand Beacham
District Court Judge

Approved as to form

_____

Aaron J. Prisbey
Counsel for Defendant

Certificate of Service

I certify that on the 5th day of February, 1999, I sent or caused to be sent, by First Class Mail and Fax, a true and accurate copy of the foregoing Order to the following:

Aaron J. Prisbey
1071 east 100 South Bldg. D, Suite 3
St. George, Utah 84770

Shayla Stephens

On state Exhibit #3
Utah Code Annotated
59-10-542 (1953 as amended)
We would like to know
what that code says.

This reference is
irrelevant to the
exhibit and its contents.

EB

Courts #1

ADDENDUM NO. 6

* IF THERE IS PROOF, FROM STATE OF UTAH, THAT INCOME ~~FEE~~ IS TAXABLE, BY LAW.
↑ UTAH LAW.

WAS IT SHOWN IN COURT TODAY

THIS IS A DETERMINATION FOR THE JURY SEE INSTRUCTIONS 5 AND 6

GRB

COUNT #2

ADDENDUM NO. 7

IN THE UTAH COURT OF APPEALS

----ooOoo----

State of Utah,

Plaintiff and Appellee,

v.

Valden Cram,

Defendant and Appellant.

MEMORANDUM DECISION
(Not For Official Publication)

Case No. 990506-CA

F I L E D
(December 21, 2000)

2000 UT App 375

Fifth District, St. George Department
The Honorable G. Rand Beacham

Attorneys: Aaron J. Prisbrey, St. George, for Appellant
Jan Graham and Laura B. Dupaix, Salt Lake City, for Appellee

Before Judges Jackson, Davis, and Thorne.

THORNE, Judge:

Defendant Valden Cram appeals from an order denying his motion to dismiss a subsequent charge, following the trial court's declaration of mistrial. We affirm.

Defendant argues that the trial court's denial of his motion to dismiss violates the Fifth Amendment right against being twice put in jeopardy for the same criminal offense.[1] We disagree. Defendant's motion to dismiss followed the trial court's decision to declare a mistrial after determining that the jury was unable to reach a verdict. Defendant made no objection to the trial court's decision to declare a mistrial.[2] We have explained that

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1. Defendant also argues that the trial court's dismissal of his motion violates Utah Const. art. I, § 12, but he presents this court no independent analysis of how the trial court's ruling violates the State constitutional provision, therefore, we do not address this issue. See Utah R. App. P. 24.

2. In fact, defendant waited until the scheduling conference for the new trial to alert the court of his objection to the

(continued...)

"Utah courts require specific objections in order 'to bring all claimed errors to the trial court's attention to give the court an opportunity to correct the errors if appropriate.'" State v. Brown, 856 P.2d 358, 361 (Utah Ct. App. 1993) (emphasis added) (citation omitted). This is particularly true where, as here, the trial court could have resolved defendant's timely objection before the jury was discharged.

"As a general rule, claims not raised before the trial court may not be raised on appeal." State v. Holgate, 2000 UT 74,¶11, 10 P.3d 346 (citing State v. Marvin, 964 P.2d 313, 318 (Utah 1998)). The preservation rule, as it is known, "applies to every claim, including constitutional questions." Id. (emphasis added). Utah does, however, recognize three exceptions to the preservation rule: (1) plain error, (2) exceptional circumstances, and (3) ineffective assistance of counsel. See State v. Irwin, 924 P.2d 5, 7 (Utah Ct. App. 1996).

Defendant fails to argue any of these three exceptions to the preservation rule. Rather, defendant acknowledges that he knew the court was contemplating a mistrial, but believed he was not obligated to object. Defendant was in error. "[A] defendant should not be permitted to forego making an objection with the strategy of 'enhanc[ing] the defendant's chances of acquittal and then, if that strategy fails, . . . claim[ing] on appeal that the Court should reverse.'" Holgate, 2000 UT 74 at ¶11 (alterations in original) (citation omitted). Accordingly, defendant has failed to adequately preserve his objection.

Were we to address the merits of defendant's double jeopardy claim, our ultimate conclusion would not change. The Utah Supreme Court has explained that "[w]hen . . . the jury is unable to reach a verdict, . . . a defendant may be retried notwithstanding the double jeopardy clause." State v. Musselman, 667 P.2d 1061, 1065 (Utah 1983) (emphasis added) (citing Lee v. United States, 432 U.S. 23, 97 S. Ct. 2141 (1977); State v. Jaramillo, 25 Utah 2d 328, 481 P.2d 394 (1971); State v. Gardner, 62 Utah 62, 217 P. 976 (1923); United States v. Scott, 437 U.S. 82, 98 S. Ct. 2187 (1980)); see also Utah Code Ann. § 76-1-403(4) (1999) (codifying the protection against double jeopardy). However, "Utah courts have interpreted the protection against double jeopardy . . . to mean that upon the declaration of mistrial, a defendant may not be retried on the same charge unless a 'legal necessity' justified termination of the trial." West Valley City v. Patten, 1999 UT App 149,¶10, 981 P.2d 420 (citation omitted).

---

2. (...continued)
mistrial.

In Patten, we set forth the standards previously articulated by our supreme court in State v. Ambrose, 598 P.2d 354 (Utah 1979), for determining whether "legal necessity" exists for granting a mistrial. First, the "trial court must give an explanation for its decision and discuss possible 'curative alternatives to a mistrial.'" Patten, 1999 UT App 14 at ¶11 (citation omitted). "Second, the trial court must enter findings of fact supporting its decision . . . ." Id. Finally, the trial court "may not declare a mistrial 'so abruptly . . . that defendant's counsel ha[s] no opportunity to object.'" Id. (alteration in original) (citation omitted).

In the present matter, the trial court, on two separate occasions, inquired of the jury foreperson whether additional deliberation time or the court answering additional questions would facilitate a verdict. On both occasions, the jury foreperson responded "no." We conclude that the trial court discussed "'possible curative alternatives to a mistrial.'" Id. (citation omitted).

The dialogue between the trial court and the jury foreperson, the subsequent Minute Entry chronicling the time the jury deliberated, the court's supplemental "deadlock" instruction to the jury, and the time spent conferring with counsel--all contained in the record--demonstrate that sufficient grounds exist to support the trial court's declaration of mistrial. We conclude the trial court did not abuse its discretion by declaring a mistrial.

Finally, the trial court clearly did "not declare a mistrial 'so abruptly . . . that defendant's counsel ha[d] no opportunity to object.'" Id. (quoting Ambrose, 598 P.2d at 360). The trial court, on two separate occasions, asked defendant's counsel if he would like to go on record in response to the jury's inability to reach a verdict or inquire of the jury foreperson. Defendant's counsel declined on both occasions. Accordingly, we are convinced that the trial court complied with the standards set forth in Ambrose and that a "'legal necessity' justified termination of [defendant's] trial." Id. at ¶10 (citation omitted). The trial judge was properly exercising his discretion

when he declared a mistrial. Double jeopardy does not bar defendant's subsequent retrial and conviction.

Denial of defendant's motion to dismiss is affirmed.

William A. Thorne, Jr., Judge

WE CONCUR:

Norman H. Jackson,
Associate Presiding Judge

James Z. Davis, Judge

CERTIFICATE OF MAILING

I hereby certify that on the 21ST day of December, 2000, a true and correct copy of the attached MEMORANDUM DECISION was deposited in the United States mail to:

AARON J. PRISBREY
ATTORNEY AT LAW
1071 E 100 S STE D-3
ST. GEORGE UT 84770-3006

LAURA B. DUPAIX
ASSISTANT ATTORNEY GENERAL
160 E 300 S 6TH FL
PO BOX 140854
SALT LAKE CITY UT 84114-0854

and a true and correct copy of the attached MEMORANDUM DECISION was deposited in the United States mail to the judge listed below:

HONORABLE G. RAND BEACHAM
FIFTH DISTRICT, ST GEORGE
WASHINGTON CO HALL OF JUSTICE
220 N 200 E
ST GEORGE UT 84770

Michele Ann Mostellar
Judicial Secretary

TRIAL COURT: FIFTH DISTRICT, ST GEORGE, 961501097
APPEALS CASE NO.: 990506-CA